



Office of the Attorney General
State of Texas

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ATTORNEY GENERAL

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Ms. Christine T. Rodriguez
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Texas Department of Insurance
P.O. Box 149104
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OR96-0253

Dear Ms. Rodriguez:

You ask us to reconsider our conclusion in Open Records Letter No. 93-671 (1993). Your request for reconsideration was assigned ID# 23963.

The Texas Department of Insurance (the "department") received a request for "copies of indicators [the department] uses to assess the solvency of [health-maintenance organizations] ("HMO's") in Texas." In Open Records Letter No. 93-671 (1993), this office determined that because we concluded that the requested information was not excepted from required public disclosure based on section 552.101 of the Government Code, the department must release the information to the requestor. You ask us to reconsider that decision based on your assertion that article 1.15B of the Insurance Code makes the requested information confidential and that consequently the information is excepted from required public disclosure under section 552.101 of the Government Code.¹ You inform us that the department's early warning system uses the requested indicators to monitor the financial solvency of HMO's.

As a preliminary matter, we note that the request for information was made to the department before the effective date of article 1.15B. *See* Act of May 30, 1993, 73d Leg., R.S., ch. 685, § 25.01, 1993 Tex. Sess. Laws 2562, 2722 (making act effective September 1, 1993). However, we believe article 1.15B pertains to this open records request even though it was made prior to the enactment of the article, because the requestor's right to the information does not vest until after the effective date of the enactment.

¹Section 552.101 of the Government Code excepts from required public disclosure "information considered to be confidential by law, either constitutional, statutory, or by judicial decision."

The triggering for the vesting of a right is the resolution of [a] controversy and the final determination. *Houston Indep. Sch. Dist. v. Houston Chronicle Publishing Co.*, 798 S.W.2d 580, 589 (Tex. App.—Houston [1st Dist.] 1990, writ denied). Under the Open Records Act, unless a governmental body readily releases requested information to a requestor, a requestor may obtain the information only when the attorney general has made a final determination or, if a suit is filed under the act, when the court with jurisdiction over the matter has rendered its final decision. Gov't Code § 552.303; *see Houston Indep. Sch. Dist. v. Houston Chronicle Publishing Co.*, 798 S.W.2d 580, 589 (Tex. App.—Houston [1st Dist.] 1990, writ denied). In the matter before us, therefore, the requestor had no vested right in the requested information prior to the effective date of article 1.15B. *Cf. Houston Indep. Sch. Dist.*, 798 S.W.2d at 589 (concluding that requestor did not have vested interest in requested information prior to trial court's final decision). Accordingly, we must consider whether the requested information falls within the scope of confidentiality provided by article 1.15B of the Insurance Code.

Article 1.15B provides as follows:

Any information relating to the financial solvency of any organization regulated by the department under this code or another insurance law of this state obtained by the department's early warning system is confidential and is not subject to disclosure under the open records law, . . . , and its subsequent amendments.

In 1989, the department promulgated rules establishing an early warning system for insurers in hazardous condition. *See* 14 Tex. Reg. 6550 (1989) (codified at 28 T.A.C. ch. 8) (Tex. Dep't of Ins.). The rules enumerate thirty conditions, the existence of any one or more of which may indicate to the Commissioner of Insurance that an insurer, *see* 28 T.A.C. § 8.2 (defining "insurer"), is in hazardous condition. *Id.* § 8.3. The commissioner may evaluate any of the listed conditions, taking into consideration all circumstances concerning the insurer's operation. *Id.* § 8.1.

The rules list articles 1.32, 3.55-1, and 21.28-A of the Insurance Code as the authority by which the department has promulgated title 28 of the Texas Administrative Code, chapter 8. At the time the department promulgated the rules, all three of these articles authorized the Commissioner of Insurance to intervene in a situation in which an insurance company is in hazardous financial condition.

Currently, articles 1.32 and 21.28-A and chapters 20A and 23 of the Insurance Code provide the department with authority to evaluate the financial condition of an organization subject to departmental regulation, using uniform standards and criteria that the department has developed pursuant to legislative instruction. In title 28 of the Texas Administrative Code, chapter 8, the commissioner has articulated the uniform standards and criteria the department uses to evaluate an organization subject to the department. We believe the department's activities pursuant to the articles 1.32 and 21.28-A, and chapters 20A and 23 of the Insurance Code, from which the department determines an

organization's financial condition by evaluating the standards and criteria listed in title 28 Texas Administrative Code, chapter 8, constitute the department's "early warning system." Under this system, we understand that various divisions communicate information about insurers' financial condition to one another to permit early recognition that an insurance company is having financial difficulty.

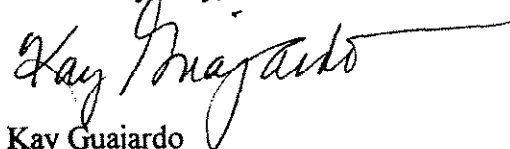
Under article 1.15B of the Insurance Code, then, any information which relates to the financial solvency of an organization regulated by the department and which the department obtains while implementing the department's early warning system is confidential. Consistent with the plain language of article 1.15B, the information must relate to financial solvency; it also must relate to an organization regulated by the department under the Insurance Code or another law of the state.

You have submitted for our review copies of information that you indicate are responsive to the request. Several of the records are blank forms listing various indicators and formulae significant to a consideration of an insurance company's financial solvency. These blank forms do not relate to the financial solvency of a particular organization subject to departmental regulation. Moreover, the indicators and formulae are substantially included within the hazardous conditions listed in title 28 of the Texas Administrative Code, section 8.3 and thus already are public information. Article 1.15B does not deem them confidential, and therefore section 552.101 of the Government Code does not authorize the department to withhold them.

On the other hand, several of the documents you have submitted for our review contain tables listing the calculated indicators for named insurance companies. These documents clearly fall within the ambit of article 1.15B of the Insurance Code; accordingly, section 552.101 of the Government Code requires the department to withhold the requested information from the requestor.

We are resolving this matter with this informal letter ruling rather than with a published open records decision. This ruling is limited to the particular records at issue under the facts presented to us in this request and may not be relied upon as a previous determination regarding any other records. If you have questions about this ruling, please contact our office.

Yours very truly,



Kay Guajardo
Assistant Attorney General
Open Records Division

KHG/ch

Ref.: ID# 23963

Enclosures: Submitted documents

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